



Sub. H.B. 259

126th General Assembly
(As Passed by the House)

Reps. Wagner, J. McGregor, Martin, C. Evans, Fende, Bulp, Wagoner, Seaver, D. Evans, Setzer, Hagan, Harwood, Gilb, Wolpert, Distel, Willamowski, Collier, Latta, Faber, Brown, Aslanides, Uecker, Allen, Perry, Mason, Hughes, Blessing, Daniels, DeBose, DeGeeter, Domenick, Fessler, Flowers, Gibbs, Law, Oelslager, Otterman, T. Patton, Reidelbach, Schaffer, Schlichter, Schneider, G. Smith, J. Stewart, Taylor, Williams

BILL SUMMARY

- Renames the offense "harassment by an inmate" as "harassment with a bodily substance."
- Expands one of the prohibitions currently set forth in this renamed offense to prohibit any person, with knowledge that he or she is a carrier of certain viruses or infected with specified diseases and with intent to harass, annoy, threaten, or alarm another person, from causing or attempting to cause that other person to come into contact with a bodily substance.
- Expands this renamed offense to additionally prohibit a person, with intent to harass, annoy, threaten, or alarm a law enforcement officer, from causing or attempting to cause the law enforcement officer to come into contact with a bodily substance, irrespective of whether the offender is a carrier of or infected with specified diseases.

CONTENT AND OPERATION

Existing law

Current law prohibits a person *who is confined in a detention facility*, with intent to harass, annoy, threaten, or alarm another person, from causing or attempting to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the

other person, by expelling the bodily substance upon the other person, or in any other manner. A violation of this prohibition is the offense of "harassment by an inmate," a felony of the fifth degree. (R.C. 2921.38(A) and (D).)

The offense of "harassment by an inmate" also is committed when a person who is *confined in a detention facility*, with knowledge that the person is a carrier of the virus that causes acquired immunodeficiency syndrome, is a carrier of a hepatitis virus, or is infected with tuberculosis and with intent to harass, annoy, threaten, or alarm another person, causes or attempts to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner. A violation of this prohibition is a felony of the third degree. (R.C. 2921.38(B) and (D).)

The prohibitions described in the preceding two paragraphs do not apply to a person who is hospitalized, institutionalized, or confined in a facility operated by the Department of Mental Health or the Department of Mental Retardation and Developmental Disabilities. The bill requires the court, on request of the prosecutor or the law enforcement authority responsible for the investigation of the violation, to cause a person who allegedly has committed a violation of either prohibition described in the preceding two paragraphs to submit to one or more appropriate tests to determine if the person is a carrier of the virus that causes acquired immunodeficiency syndrome or a hepatitis virus, or is infected with tuberculosis. If a court orders any test under this provision, the court must charge "the offender" with the costs of the test unless it determines that "the accused" is unable to pay, in which case the costs must be charged to the entity that operates the detention facility in which the alleged offense occurred. (R.C. 2921.38(D) and (E).)

Operation of the bill

The bill renames the offense described above under "**Existing law**" as the offense of "harassment with a bodily substance" (R.C. 2921.38(D)), expands one of the prohibitions, and adds an additional prohibition.

The bill expands current law's prohibition with respect to a person who has knowledge that he or she is a carrier of certain viruses or infected with specified diseases and commits harassment with a bodily substance by removing the requirement that the offense applies only if the offender is confined in a detention facility. Thus, the bill prohibits *any person*, with knowledge that the person is a carrier of the virus that causes acquired immunodeficiency syndrome, is a carrier of a hepatitis virus, or is infected with tuberculosis and with intent to harass, annoy, threaten, or alarm another person, from causing or attempting to cause the other person to come into contact with blood, semen, urine, feces, or another

bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner. A violation of this prohibition remains a felony of the third degree. (R.C. 2921.38(C) and (D).)

The bill additionally prohibits a person, with intent to harass, annoy, threaten, or alarm a law enforcement officer, from causing or attempting to cause the law enforcement officer to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the law enforcement officer, by expelling the bodily substance upon the law enforcement officer, or in any other manner. A violation of this prohibition is a felony of the fifth degree. (R.C. 2921.38(B) and (D).)

The bill retains without substantive change the existing provision that exempts a person who is hospitalized, institutionalized, or confined in a Department of Mental Health or Department of Mental Retardation and Developmental Disabilities facility from the prohibitions set forth in R.C. 2921.38 and the existing provisions that pertain to tests to determine if a person who allegedly has committed a violation of any of the prohibitions is a carrier of the virus that causes acquired immunodeficiency syndrome or a hepatitis virus, or is infected with tuberculosis. These provisions will apply to current law's prohibition contained in the section that the bill expands, the additional prohibition that the bill enacts in the section, and current law's prohibition in the section that the bill does not change (but note that the existing provision regarding payment of test costs by an offender includes language that at least implies that it will apply only when the alleged offense in question is committed in a detention facility). (R.C. 2921.38(E) and (F).)

HISTORY

ACTION	DATE
Introduced	05-17-05
Reported, H. Criminal Justice	10-27-05
Passed House (94-0)	12-13-05

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